THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition (M/S) No. 784 of 2001
(Old CMWP No. 17282 of 2000)

Noor Mohammad S/O Saddiq, R/O Village Akbarpur Jhojha, Paragana Bhagwanpur, Tehsil Roorkee, District Haridwar.

……..Petitioner.

Vs.

1. Deputy Director of Consolidation, Saharanpur Camp, District Haridwar.
2. The Settlement Officer of Consolidation Roorkee, District Hardwar.
3. The Consolidation Officer (Roorkee) Hardwar.
4. Bundoo S/O Saddiq,
5. Yusuf S/O Saddiq,
6. Sharif Ahmed, S/O Nazir Hasan, Respondent nos. 4 to 6 are all residents of village Akbarpur Jhojha, Paragna Bhagwanpur, Tehsil Roorkee, District Haridwar.

……..Respondents.

Sri Lokendra Dobhal, learned counsel for the petitioner.
Learned Standing Counsel for the State-respondents.
Sri Rajendra Singh, learned counsel for the respondent no.4.
Date September 22, 2006

P.C.: Hon'ble B.S. Verma, J.

Learned counsel for the petitioner is permitted to file certified copy of the order passed by the Consolidation Officer. Copy of order has been filed, which is taken on record.

The petitioner has preferred this writ for quashing the order dated 23.3.2000 passed by the respondent no.1 –Deputy Director of Consolidation, Saharanpur, Camp Haridwar (***for short D.D.C.)*** and the order dated 12.3.1999, passed by Settlement Officer Consolidation (***SOC***) Roorkee, district Haridwar.

Brief facts of the case are that, according to the petitioner, Assistant Consolidation Officer concerned proposed two Chaks in favour of the petitioner by taking the original holding of the petitioner plot nos. 44, 45, 47 etc and second Chak of plot no.112 and 107 of the village concerned. Subsequently, the Consolidation Officer modified the Chak, which was proposed by the Assistant Consolidation Officer in provisional

scheme. Accordingly, order was passed and the Chaks were modified by the Consolidation Officer.

Against the modification of the Chak, the petitioner preferred Appeal No. 564 under Section 21(2) of Consolidation of Holdings Act before the Settlement Officer Consolidation. The Settlement Officer Consolidation after hearing both the parties vide order dated 12-3-1999 allowed the appeal and modified the order passed by the Consolidation Officer and allotted two Chak to the petitioner with some alteration and being dissatisfied by the said order, the petitioner and respondent No. 4 both have preferred revision before the Deputy Director of Consolidation (DDC).

The DDC vide his order dated 23-3-2000 passed in Revision Nos. 209 and 221 allowed the revisions filed by Bundu and Noor Mohammad. The learned D.D.C. has observed that both Bundu and Noor Mohammad both want one chak each instead of two Chaks, therefore, the Chak of Noor Mohammad was omitted from Gata No.44 and carved out on Gata NO.107 of his original holding and Bundu was allotted the Chak taken from Noor Mohammad. Accordingly the proposed Chaks were amended.

I have heard learned counsel for the petitioner as well as respondent no.4 and perused the material on record. Counter Affidavit has been filed on behalf of the respondent no.4 and along with counter affidavit, copy of Form CH 2A was filed.

Learned counsel for the petitioner Sri Lokendra Dobhal has vehemently contended that the main ground taken in the revision was that the second Chak, which was proposed on Gata Nos. 112 and 107 by the Settlement Officer Consolidation is a *Udaan Chak.* After considering the grounds raised by the petitioner as well as respondent no.4, the learned D.D.C. has amended the Chak and proposed one Chak each to the petitioner as well as respondent no.4 on their original holding.

The ground and the argument advanced by the learned counsel for the petitioner are misconceived. It is pertinent to mention here that the petitioner and respondent no.4 both are real brothers and from perusal of CH 2A and other documents on record coupled with the finding of the Revisional Court that Khasra No. 107 is the original holding of the petitioner, the argument regarding ***Udaan Chak*** is not tenable because ***Udan Chak*** means if a Chak is not given to tenure holder on his original holding. In the present case, the original holding was given to the petitioner. It is significant to mention that in Writ jurisdiction, the Court cannot re-appreciate the evidence and cannot sit as a court of appeal. Only the perversity of the order has to be seen.

It was also contended by the learned counsel for the petitioner that the petitioner had installed tube-well in his land and there was a source of irrigation in his earlier Chak. Again the scheme of Section 19 of the U.P. Consolidation of Holdings Act, the Chak has to be proposed as far as possible on his source of irrigation. The argument of the learned counsel is again misconceived. The Consolidation Authorities have already considered this aspect, because the Chak which was proposed on Khasra No. 107 has a source of irrigation and the entry of boring of tube-well is there in the Form CH 2A and names of both the brother, the petitioners as well as respondent no.4 are recorded thereon, which indicates that Gata No. 107 of village Salhapur is the original holding of the petitioner and having source of irrigation.

In view of the above, I find that the impugned order does not suffer from any infirmity or illegality. By the impugned order, the real brothers, petitioner and the respondent no.4, have been given one Chak each and it cannot be said that the proposed Chak is against the scheme of Section 19 of the Consolidation of Holdings Act. The writ petition is devoid of merit and must fail.

The writ petition is hereby dismissed. No order as to costs. The interim order dated 10-4-2000 is hereby vacated.

(B.S. Verma, J.)

RCP